

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Case No. 11-20493

Plaintiff,

v.

Honorable John Corbett O'Meara

DONNELL DOMAN JACKSON,

Defendant.

ORDER DENYING CERTIFICATE OF APPEALABILITY

On July 28, 2015, defendant Donnell Doman Jackson filed notice of appeal of this court's July 16, 2015 order denying his motion to dismiss the indictment. In response to his notice of appeal, this court must determine whether to issue a certificate of appealability.

In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c). If an applicant files a notice of appeal, the district judge who rendered the judgment must either issue a certificate of appealability or state why a certificate should not issue.

Fed. R. App. P. 22(b)(1). The court may issue a certificate of appealability if the petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

[T]he petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that the court could resolve the issues [in a different manner] or that the questions are 'adequate to deserve encouragement to proceed further.'

Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983); Hence v. Smith, 49 F. Supp. 2d 547, 549 (E.D. Mich. 1999).

The court finds that defendant Jackson has failed to make a substantial showing of the denial of a constitutional right. Therefore, it is hereby **ORDERED** that the request for a certificate of appealability is **DENIED**.

s/John Corbett O'Meara
United States District Judge

Date: February 22, 2016

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, February 22, 2016, using the ECF system and/or ordinary mail.

s/William Barkholz
Case Manager